IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2831 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

PROF.CHHOTABHAI D PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JJ YAJNIK for Petitioners

MR RJ OZA for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

MR JR NANAVATI for Respondent No. 3

MR BAIJU JOSHI for MR SHIRISH JOSHI for Respondent No. 4

No one has appeared for Respondents No. 5, 6, and 7 despite service.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/02/2001

ORAL JUDGEMENT

#. The petitioners nos. 1 to 4 herein claim to be the Professors in various subjects in Sahu S.P.Jain Arts and Commerce College, Dhrangadhra, the petitioners Nos.5 to 9 claim to be Professors working in Shree Somnath College Veraval and petitioners Nos.10 and 11 claim to be Professors in Arts and Commerce College, Jamjodhpur and P.D.Malaviya Graduate Teachers' College, Rajkot respectively. A chart Annexure-A has been enclosed with the petition to give details about the dates of their appointments as Lecturers, Professors and dates of recognition/renewal as P.G.Teacher and the names of the colleges in which they are working.

#. Regarding the petitioner No.1, it has been stated that, he was appointed as Lecturer in Statistics at Sahu S.P.Jain Arts and Commerce College, by order dated 7.5.1967 with effect from 15.6.1967 and by order dated 25.6.1972 he was promoted as Professor with effect from 14.6.1972 subject to the approval of the Saurashtra University and the Saurashtra University by its letter dated 26.9.1972 approved his appointment as Professor with effect from 14.6.1972. The petitioner No.1 was then confirmed as Professor and has been discharging his duties as such since his appointment as Professor. It is claimed that the petitioner No.1 is also recognised as a Post Graduate Teacher by the respondent - Saurashtra University on 30.11.1979 and his recognition as P.G.Teacher was renewed and that he has been working as P.G.Teacher in pursuance of the recognition granted by the Saurashtra University. It is stated that, similarly other petitioners have been appointed as per the details in Annexure-A and they have been working as Professors and some of them have been working as Head of Departments continuously since the date of their appointment as Professors. That they have also been recognised by the University as P.G.Teachers and have been discharging duties as such in the various colleges affiliated to the Saurashtra University. It has been stated that, under section 2(13) teachers means Professors, Readers, Lecturers, and such other persons imparting instruction in the University, an affiliated college or a recognised institution or an approved institution as may be declared to be teachers by the Statutes.

#. All the petitioners, thus claiming to be Professors and recognised P.G.Teachers have claimed that they are to be paid at par with the corresponding post holders in the University Departments. Reference has been made to the Government Resolution dated 14.9.1988 which provides revision of pay scale of teachers, librarians and

physical education personnel in Universities and colleges and other measures for maintenance of standards in higher education. As per this resolution, pay-scale for Lecturer, Reader/Lecturer (Selection Grade) and Professor are as under.:

(i) Lecturer Rs.2200 - 4000

(ii) Reader/Lecturer
(Selection Grade) Rs.3000 - 5000

(iii) Professor Rs.4500 - 5700

In this context, the grievance of the petitioners is that the petitioners as Professors and recognised P.G.Teachers are similarly situated to the Professors working in the University Department and on the principle of equal pay for equal work, they are entitled to be paid the pay-scale of Rs.4500-5700 instead of Rs.3700-5700 and that by nonpayment in the pay-scale of Rs.4500-5700 they have been subjected to discrimination in violation of the provisions of Articles 14 and 16 of the Constitution of India. For the purpose of claiming the parity and for invoking the principle of equal pay for equal work, reference has been made to the several decisions of the Supreme Court right from the case of Randhir Singh Vs. Union of India, reported in AIR 1982 SC 879 to Haryana State Adhyapak Sangh Vs. State of Haryana reported in AIR 1990 SC 968. The basic grievance which has been raised in the petition is that the petitioners are discharging similar duties as are being discharged by the Professors in the University Departments - rather they are discharging more onerous duties in comparison to the Professors in the University Departments, and therefore, they have to be paid at par with the Professors in the University Departments. On this premises, prayer has been made that the respondents authorities be directed to pay the petitioners the pay scale which is being given to the Professors in the respondent University from the respective date of their appointment as Professors in the affiliated colleges approved and recognised institutions as the case may be and to put the petitioners in the pay scale of Rs.4500-5700 from 14.9.1988 and pay them all other allowances and benefits at par with their counter-parts Professors in the respondent University.

#. This petition has been pending in this court for the last ten years and as usual none of the respondents, i.e.

State of Gujarat, University and colleges have cared to file any reply. However, the matter has been argued on behalf of the State, University and one of the affiliated colleges and the petition has been contested orally.

#. Mr.J.R.Nanavati has argued on the basis of the Government Resolution dated 14.9.1988 which has been specifically referred to by the petitioners at page 8 of the petition. Copy of the Government Resolution dated 14.9.1988 as produced by Mr.J.R.Nanavati during the course of the arguments shall remain on record. This resolution is in the matter of revision of pay scale of teachers, librarians and physical education personnel in Universities and colleges and other measures for maintenance of standards in higher education issued by the Education Department of the Government of Gujarat on 14.9.1988 in the context of earlier resolution dated 23.11.1976 and the Government of India, Ministry of Human Resources Development Department of Education letters dated 17.6.1987 and 22.7.1988. This resolution says that the Government had sanctioned UGC pay scales to University and College Teachers under GR ED dated 23.11.1976. Thereafter, on recommendation of Mehrotra Commission, Government of India has revised the pay scales of University and College teachers with effect from 1.1.1986 vide its letters dated 17.6.1987 and 22.7.1988. The question of revision of pay scales of University and College teachers as well as librarians and physical education personnel on the lines of Government of India, was under consideration of Government and the Government having considered the issue carefully decided that the pay scales of teaches in Universities and non Government and Government affiliated Colleges and those of librarians and physical education personnel should be revised with effect from 1.1.1986. The terms and conditions of revision of pay scales of teachers are mentioned in Appendix I with which we are concerned in the present case. Appendix I with this resolution dated 14.9.1988 says that, revision of scales of pay have been made effective from 1.1.1986 and such revised scale of pay effective from 1.1.1986 have been mentioned in Annexure-I. This scheme is applicable to the teachers in all the Universities (excluding Agricultural and Ayurvedic Universities) and Non-Government and Government affiliated colleges (excluding Engineering, Ayurved, Pharmacy, Agricultural, Medical and Veterinary Science College) admitted to the privilege of the Universities unless they specifically exercise option in writing to remain out of this Scheme as provided in para 17 of this Appendix I. It has been specifically mentioned that, all the teachers appointed after the date from which the

scheme has been given effect to will be governed by the provisions of the scheme. In para 6 of the Appendix I it has been provided that, recruitment to the posts of Lecturers, Readers and Professors in Universities and colleges shall be on the basis of merit through all India advertisement and selection, provided that Lecturers who fulfill the criteria prescribed in this scheme will be eligible for promotion to the posts of Readers. As per para 7 of this Appendix I, the minimum qualifications required for appointment to the posts of Lecturers, Readers and Professors will be those prescribed by the UGC from time to time. Generally, the minimum qualifications for appointment to the post of Lecturer in the scale of pay of Rs.2200-4000 shall be, Master's degree in the relevant subject with atleast 55% marks or its equivalent grade, and good academic record and they will also be entitled to the benefits designed in this respect for equal category of teachers in this scheme and the scale of pay will be as under :-

(i) Lecturer Rs.2200 - 4000

(ii) Reader/Lecturer
(Selection Grade) Rs.3000 - 5000

(iii) Professor Rs.4500 - 5700

#. I have heard learned counsel for the petitioners as well as learned counsel on behalf of the State of Gujarat, Saurashtra University and the private college and have gone through the pleadings in the petition and the Government Resolution dated 14.9.1988.

#. In the opinion of this Court, grievance raised on behalf of the petitioners in this petition is wholly misplaced. No absolute equality can be claimed merely because of the nomenclature of the designation of Professors in the affiliated colleges. The Professors working in the affiliated colleges are not at all comparable with the Professors working in the University Departments and so far as the pay-scale of Rs.4500-5700 claimed by the petitioners as is applicable in the University Departments is concerned, this Court finds that as per the case of the petitioners themselves, all of them have been appointed prior to the date on which the scheme in question was brought into force. This is the scheme according to which the recruitment to the post of Lecturer, Reader and Professor in the Universities and

colleges has to be based on merit through all India selection. It is not the case of the petitioners that, they faced any selection at all India level for their appointments as Professors. The order Annexure-B dated 25.6.1972 which has been enclosed with the petition says that, it was the case of the promotion in which the petitioner No.1 who was working as Lecturer was promoted as Professor. These petitioners are not appointed under the merit promotion scheme formulated by the UGC in 1983, and, therefore, I do not find any basis for the grievance of the petitioners that they should also be paid the pay-scale of Rs.4500-5700. There is no question of invoking the principle of equal pay for equal work in the case at hand. There cannot be any quarrel with the preposition of law that, neither equals can be treated in an unequal manner nor unequals can be treated in an equal manner, but the discrimination cannot be pleaded unless the parity is established. In the instant case, this court is of the considered opinion that the petitioners or other similarly situated teachers holding the post of Professor are not at all comparable with the Professors in the University Departments appointed under the merit promotion scheme formulated by the UGC in the year 1983. The appointments of these petitioners as Professors in the respective affiliated colleges appear to be the case of promotion in their own colleges and it is not at all an appointment under merit promotion scheme of UGC. The Professors working in the affiliated colleges, therefore, cannot claim parity with the Professors working in the University Departments who are entitled to claim UGC pay-scale. Even, if it is assumed in favour of the petitioners that they hold similar qualification, but holding of similar qualification cannot be any basis for claiming the pay-scale of Rs.4500-5700. To claim any particular pay-scale is a matter which is governed by the relevant schemes and the rules made in this behalf. No material whatsoever has been placed before this court by the petitioners so as to sustain their claim for the pay-scale of Rs.4500-5700 and merely because they hold the designation of Professor in the affiliated colleges, they cannot claim the pay at par with the Professors working in the University Departments under the merit promotion scheme.

#. In the opinion of this court, the whole argument and the entire petition is wholly misconceived and even if all the averments made by the petitioners in the petition are taken to be correct as not controverted by any of the contesting respondents, this court finds that, plea raised on behalf of the petitioners cannot be sustained. This court does not find any merit in this special civil

application. The same is, therefore, rejected with no order as to costs. Rule is hereby discharged.

(M.R.Calla,J)
(pathan)